

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

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| IN RE: | |
| U S WEST COMMUNICATIONS, INC., n/k/a QWEST CORPORATION | DOCKET NO. INU-00-2 |

**ORDER ESTABLISHING PROCEDURAL SCHEDULE
AND ADOPTING MULTI-STATE PROCESS**

(Issued August 10, 2000)

On January 28, 1997, the Utilities Board (Board) issued an order initiating an investigation relating to the possible future entry of U S WEST Communications, Inc., n/k/a Qwest Corporation (Qwest), into the interLATA market. The proceeding was preliminarily identified as Docket No. 47 U.S.C. § 271(d)(2)(B). On June 24, 1997, the Board issued an order setting the procedure it intended to follow when Qwest made a filing with the Board prior to making an Iowa § 271 application with the FCC.

What was identified by Qwest as a § 271 application was filed with the Board on January 31, 2000. No testimony, affidavits, or other supporting documentation accompanied the filing. The Board issued an order on February 10, 2000, opening an investigation docket, identified as Docket No. INU-00-2, to review the filing.

In its January 31, 2000, filing Qwest also requested a schedule be set that would allow the Board to consider all aspects of the docket contemporaneous with the Regional Oversight Committee (ROC) operational support systems (OSS) test

and a modification of the Board's June 24, 1997, order which required prefiled testimony and an adversarial hearing.

In a filing dated May 4, 2000, Qwest encouraged the Board to consider a multi-state process for purposes of its review of track A (competition issues)¹, various aspects of each item on the 14-point competitive checklist, § 272 (separate subsidiary) issues, and public interest considerations. The multi-state proposal filed by Qwest set out suggested workshop topics and indicated that, as proposed, it would include "the filing of testimony, the questioning of witnesses under oath, a discovery process, and an exhaustive exploration of issues."

The Board considered the concept of a multi-state process for purposes of its review of a Qwest § 271 application. Many discussions were held between the Board's staff and the staff's of the Idaho Public Utilities Commission, North Dakota Public Service Commission, Montana Public Service Commission, and the Utah Public Service Commission. A draft procedural schedule was crafted to cover many of the concepts that the Board finds necessary in this review. The Board issued an order dated June 27, 2000, requesting comment on that draft multi-state procedural order, as well as the overall concept of reviewing a § 271 application on a multi-state basis.

One specific question on which the Board sought comment was: If the Board uses a multi-state proceeding for issues that are common to all Qwest states, how

¹ See 47 U.S.C. § 271(c)(1)(A).

would that affect the participation of the smaller competitive companies? Only three participants, the Consumer Advocate Division of the Department of Justice (Consumer Advocate), AT&T Communications of the Midwest, Inc. (AT&T), and Qwest, responded to the Board's request for comments. The lack of response by any of the smaller participants appears to indicate that this is not of great concern to those companies.

Consumer Advocate, in its comments, raised a valid concern about the resolution of discovery disputes. The resolution that appears as part of the multi-state procedural document provides for the outside consultant to make the initial determination on discovery disputes. If necessary, oral argument will be held on the discovery dispute. The transcript and determination by the outside consultant will be included in the official record of the proceeding.

In order to keep the process moving forward, it was anticipated that any party wishing to appeal the determination of the outside consultant could take the issue to the individual state board or commission as an unresolved issue, once the workshop process is concluded.

One other concern that was raised by Consumer Advocate that should be addressed directly is that the multi-state procedural document did not "affirmatively state whether and what kind of state-specific proceeding will follow the collaborative workshops." The multi-state document did not address this issue because each state must have the flexibility to determine, once the workshop process is completed, what additional state proceedings will be needed to complete the investigation of Qwest's

compliance. The Board will hold state-specific proceedings in Iowa, after the conclusion of the multi-state proceedings, to address areas of the proceeding that require state-specific information, as well as to address those issues that remain unresolved. As indicated in the multi-state procedural document, those unresolved issues may require further evidence or hearings or may be resolved by the Board by a review of the evidence and testimony previously given. The Board has no way of making more specific statements about the nature and magnitude of those proceedings until after the workshop process has been completed and the Board has had an opportunity to review the record up to that point.

AT&T's comments urge the Board to reject any multi-state procedure, indicating skepticism that there will any savings of resources. As stated above, the Board does anticipate the need for additional hearings after the conclusion of the multi-state workshop process, but does not share the view of AT&T that each state will end up conducting its own complete Section 271 proceeding. The Board fully expects the multi-state workshop process to narrow and resolve many issues, although the Board recognizes, as discussed above, that additional proceedings will be necessary at the conclusion of the workshop process.

SCOPE OF REVIEW

The Board's review will encompass each of the elements of Qwest's entry into the interLATA market that the FCC must address under 47 U.S.C. § 271(d)(3) of the Telecommunications Act, which consist of the following:

1. At least one Commission-approved agreement with an unaffiliated competitor who offers predominantly facilities-based services to residential and business customers as provided in § 271(c)(1)(A) or an approved statement of terms and conditions as provided in § 271(c)(1)(B);
2. Full implementation of the competitive checklist in § 271(c)(2)(B);
3. Compliance with the affiliate requirements of § 272; and
4. Consistency with the public interest under § 271(d)(3)(C).

The following sections of this order are adapted from the draft multi-state procedural order that was attached to the Board's order dated June 27, 2000. Any reference in these sections to "Commission" should be understood to refer also to the Iowa Utilities Board.

LESS CONTROVERSIAL CHECKLIST ITEMS

Based on Qwest's assertion that substantial agreement and progress on checklist items 3, 7, 8, 9, 10, and 12 (Poles/Ducts/Conduits, 911/E911, Directory Assistance, Operator Services, White Pages Listings, Number Administration, Signaling/ Assoc. Databases, and Dialing Parity) has been reached among parties in other Qwest states and that any outstanding issues should be able to be discussed and resolved among parties without necessitating an in-person workshop, the Commissions agree to develop the record on these checklist items through written filings. Such a process will include the filing of Qwest's case, discovery, comment cycles, and either a joint resolution filed by the parties, or a report from staff (developed with the assistance of the Outside Consultant) to each commission based

on the written record. To the extent that agreement cannot be reached on these checklist items, mini-workshops on isolated topics may be scheduled or issues may be deferred to the state commissions for resolution. The remaining checklist items would be addressed through a series of three workshops as outlined below.

WORKSHOP RECORD

The workshops shall be transcribed by a court reporter. Some settlement discussions may occur off the record. The court reporter shall also maintain a continuing list of exhibits introduced as evidence in the workshops. Participants to the proceeding shall provide the Outside Consultant with a complete e-mail list of all persons to whom materials distributed in this combined docket should be distributed; service shall be electronic only, unless a participant is unable to receive electronic distribution. Any participant who is unable to receive service by e-mail shall be responsible for providing all participants with alternative instructions for service, including an express service account number if overnight delivery is requested. Pre-filed testimony and legal pleadings shall be filed with each of the state commissions, according to the rules of that state. The record from the workshops shall be considered a part of the official record of the proceeding in each of the participating states.

WRITTEN TESTIMONY

Qwest and all participants filing pre-filed testimony shall file such testimony or comments under oath according to the schedule set forth below. All parties are

strongly encouraged to be as forthcoming as possible in the pre-filed materials, such as testimony or comments. Additional testimony will only be considered to the extent that it was not available at the time that original materials were filed. The Commissions recognize that there will be circumstances when evidence is newly discovered or arises for the first time in rebuttal thereby requiring parties to present new evidence at the workshops; however, these circumstances should be the exception.

QUESTIONING OF WITNESSES

Although the collaborative workshops will be less formal than adjudicative proceedings, all parties have the opportunity to question witnesses at each workshop. All witnesses shall offer testimony and explanation under oath during the course of the workshops.

DISCOVERY

All parties have the ability to submit relevant, focused written discovery according to the schedule set forth below. All discovery and non-confidential responses shall automatically be served upon all parties to each individual state's proceeding. A party participating in only one state or responding to data requests that are specific to a particular state may limit service of responses and responsive materials that the party has designated as confidential to parties in that state's proceeding. Any party to the proceeding that has a discovery dispute shall raise the dispute in a brief letter to the decision-maker identified by the Commissions as

responsible for overseeing the discovery process. If the discovery dispute persists, the decision maker shall have oral argument (either in person or via telephone) on the issue within three business days from receipt of the letter, which argument shall be transcribed by a court reporter and included as a part of the official record of the proceeding.²

OUTSIDE CONSULTANT

The states shall collectively select and retain one Outside Consultant or consulting firm to coordinate the workshops. The consultant shall be retained by the state commissions collectively, but shall be funded by Qwest. The Outside Consultant's responsibilities shall be to:

- a. Coordinate and run the collaborative workshops;
- b. Maintain a complete record of the proceeding including issue resolution;
- c. Assist commission staff members from each state to draft a report of the agreed upon and unresolved issues in each workshop;
- d. Manage the discovery; and
- e. Keep all parties to the workshop proceedings on task and timely moving toward resolution.

STATE STAFF

Staff from each state may participate in each of the workshops. Staff shall have advisory, not advocacy, responsibilities; however, if desired, a commission may

² The Board's discussion at page three in this order on the issue of discovery disputes should be reviewed in conjunction with this section from the multi-state procedural order.

identify separate adversarial staff, which may not have *ex parte* contacts with advisory staff regarding the multi-state workshops. Staff shall have the opportunity to submit discovery according to the schedule set forth below and to ask pertinent questions of parties during the course of the workshops.

UNRESOLVED ISSUE RESOLUTION PROCESS

If the parties are unable to reach agreement on an issue, then the issue shall be considered “Unresolved.” Once an issue is considered to be in agreement during the workshop process, it will not be reopened unless new information or evidence, not previously available to the parties, justifies reopening the issue. Each Commission shall have independent authority to resolve each unresolved issue in the manner they deem appropriate. For example, a Commission could resolve an issue based on the record from the workshops or, on its own motion or the motion of a party, through the taking of additional evidence, or some combination thereof.

TREATMENT OF CONFIDENTIAL MATERIAL

Confidential material will be protected from disclosure via the processes used by each state for protecting confidential or trade secret information in their state. All parties to the proceeding shall abide by the terms and conditions of each Protective Order.

SCHEDULE

The schedule shall apply to this proceeding unless good cause arises to alter the schedule. Parties to the multi-state process shall make all conceivable good faith efforts to keep to the current schedule. Modifications will be made as necessary as determined by the Outside Consultant in consultation with the Commissions and staff.

POST-OSS TESTING EVALUATION

Qwest's Operational Support Systems (OSS) are currently being tested under the auspices of the Qwest Regional Oversight Committee (ROC). When the testing is complete, the Commissions will determine what process to utilize to evaluate the results of the ROC test.³

FOLLOW-UP WORKSHOPS

Follow-up workshops on isolated topics may be necessary to complete full resolution of issues. To the extent necessary, the Outside Consultant shall work with all parties to schedule the additional workshops as necessary. It is anticipated that these follow-up workshops will be shorter in duration and more focused, thereby allowing them to be scheduled shortly after the primary workshop on the checklist item has occurred.

³ The Board will consider the results from the ROC testing, in conjunction with the record developed in this proceeding, in making a determination for those checklist items that are OSS dependent.

REPORTS OF FINDINGS AND DISPUTES

Within 20 days after each workshop and any follow-up workshops are complete, the commission staff members from each state, together with the assistance of the Outside Consultant, will prepare and submit a report of the agreed upon and unresolved issues in each workshop, identifying draft findings of fact and conclusions of law, differing views on resolution of the disputed issues and recommended findings of disputed issues. Within ten days of submission of such report, the parties shall file any proposed additional or revised findings of fact, conclusions of law, and/or clarification of disputed issues. Within ten (10) days after the parties comments are submitted, the staff in consultation with the Outside Consultant shall file their reports with each of the Commissions.

RESOLUTION OF UNRESOLVED ISSUES

Unresolved issues shall be submitted to each Commission for its independent resolution. As previously stated, the Commissions could resolve an issue based on the record from the workshops or, on its own motion or the motion of a party, through the taking of additional evidence or some combination thereof. Each Commission shall set a process and schedule that will allow complete resolution of these issues. Parties shall, at a minimum, have an opportunity to file briefs and reply briefs and to argue the disputed issues before each state commission.

REMOTE PARTICIPATION

Qwest shall make provision for parties that do not want to travel to a workshop in a distant state to at least participate by telephone using a toll free number. To the extent reasonably practical, Qwest will also make one site available in each fully participating state for parties to participate by videoconference. Videoconferencing will not be made available in the following circumstances:

- a. In the state that is hosting the workshop;
- b. If no party from the state notifies Qwest at least three weeks in advance of the workshop that it intends to participate in the workshop via videoconference; or
- c. If no videoconferencing equipment is reasonably available on the dates of the scheduled workshop.

Each of the commissions will work with Qwest to identify and obtain the use of state videoconferencing facilities where practical and/or less expensive than similar private facilities.

SUBMISSION TO FCC

Once these workshops are complete and each Commission has made a determination on unresolved issues for its state, the Commissions anticipate that the record will be sufficiently developed such that Qwest can make its § 271 filing to the FCC and the Commissions can make a reasoned recommendation pursuant to Section 271(d)(2)(B) of the Act.⁴

⁴ This concludes the sections being adopted by the Board from the draft multi-state procedural order.

At the conclusion of this process, the Board anticipates that Qwest will then have a complete formal application that it can present to the FCC. There is no statutory requirement that the formal application be made to this Board as well as to the FCC, but the Board requests that Qwest file its application, fully supported by sworn testimony, with this Board as far in advance of its filing with the FCC as possible and preferably at least 90 days before filing the application with the FCC. This will provide the Board with time to evaluate the final application, receive testimony, and hold hearings as necessary to make findings and a recommendation within the timeline suggested by the FCC.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The Board's initial review of Qwest Corporation's compliance with the requirements of 47 U.S.C. § 271 will be through participation in the multi-state workshop process with the Idaho Public Utilities Commission, North Dakota Public Service Commission, Montana Public Service Commission, Utah Public Service Commission, and other state commissions that may elect to join this process.
2. Each participant shall provide to the Board's staff the names and e-mail addresses of each individual that should be included on the distribution list for filings as discussed in this order. These names and e-mail addresses should be provided within seven (7) days of the issuance of this order.

3. The following procedural schedule is adopted. The Board recognizes that some of the early deadlines have already passed, but notes that each of these deadlines were met by Qwest, so that if the Board did order participation in the multi-state workshop process as part of its review, there would be no delay.

a. General dates and timelines:

June 9, 2000: Qwest will file Statements of Generally Available Terms and Conditions (SGAT) pursuant to section 252(f) in each of the participating states and an overview of its entire 271 case, including to the greatest extent possible, identifying all evidence it intends to produce to support its case that it is now in compliance with section 271.^{5 and 6}

June 2000: The Commissions retain the Outside Consultant.

Discovery: Each party shall have seven (7) working days to respond to and/or object to written discovery propounded upon it. Reasonable extensions of time to respond to discovery shall be extended where the circumstances warrant.

⁵ Qwest filed its Statement of Generally Available Terms (SGAT) in this docket on June 9, 2000. The Board will continue a review of that filing pursuant to 47 U.S.C. § 252(f)(4). To facilitate this review, the Board will open a docket to review those issues raised by the SGAT not scheduled for review in this proceeding. The proceeding to review the SGAT will be identified as Docket No. SPU-00-11.

⁶ On July 14, 2000, Qwest filed a "Preliminary Statement" on its application to provide in-region interLATA service. Included in the preliminary statement was a brief summary of the legal requirements of Section 271 and an outline of the testimony and evidence Qwest intends to present in support of its application in written testimony.

b. Checklist item numbers 3, 7, 8, 9, 10, & 12

1. Qwest's Direct Testimony: September 5, 2000
2. Intervenor Comments: October 13, 2000
3. All Parties Rebuttal Comments: November 3, 2000
4. Filing of joint resolution or staff report

c. Workshop 1: Subject--Checklist Item Numbers 1 (interconnection and collocation), 11 (number portability), 13 (reciprocal compensation) and 14 (resale) as well as Section 272.

1. Qwest's Direct Testimony: July 31, 2000
2. Intervenor Responsive Testimony: September 5, 2000
3. All Parties Rebuttal Testimony: September 18, 2000
4. Workshop Dates: October 3 to October 6, 2000
Location: Salt Lake City, Utah

d. Workshop 2: Subject--Emerging Services including Line Sharing, Checklist Item Number 5, including Dark Fiber, Subloop Unbundling, Packet Switching

1. Qwest's Direct Testimony: October 27, 2000
2. Intervenor Responsive Testimony: November 24, 2000
3. All Parties Rebuttal Testimony: December 8, 2000
4. Workshop Dates: December 18 to December 21, 2000
Location: Boise, Idaho or Helena, Montana

e. Workshop 3: Subject--Checklist Item Numbers 2 (combinations), 4, and 6 (to the extent not previously covered), Public Interest (including the Performance Assurance Plan) and Track A

1. Qwest's Direct Testimony: January 19, 2001
2. Intervenor Responsive Testimony: February 23, 2001
3. All Parties Rebuttal Testimony: March 9, 2001
4. Workshop Dates: March 26 to March 30, 2001
Location: Des Moines, Iowa

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 10th day of August, 2000.